

NITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ROSANNE BROOKS,	:	CIVIL ACTION NO. 1:12-cv-12112-RWZ
	:	
Plaintiff,	:	MDL No. 2419
	:	Master Docket No. 1:13-md-2419-RWZ
v.	:	
	:	Honorable Rya W. Zobel
UNIFIRST CORPORATION, A/D/B/A	:	
UNICLEAN CLEANROOM SERVICES,	:	<u>DEMAND FOR JURY TRIAL</u>
BRYAN ELZHOLZ, M.D., and	:	
NEW YORK ADVANCED SURGICAL	:	
INTERVENTION CARE PLLC,	:	
	:	
Defendants.	:	

**SHORT FORM COMPLAINT
AGAINST UNAFFILIATED DEFENDANTS**

Plaintiff, Rosanne Brooks, against Defendants, alleges as follows:

FIRST COUNT

1. Pursuant to MDL Order No. 7, entered in In Re: New England Compounding Pharmacy, Inc. Products liability Litigation, Master Docket No. 1:13-md-2419-RWZ, the undersigned counsel hereby submits this Short Form Complaint and Jury Demand against Defendants, and adopts and incorporates by reference the allegations in Plaintiffs' Master Complaint, with attachments, and any and all amendments thereto.

2. Plaintiff is a resident of the State of New York.

3. Plaintiff brings this action:

☒ On behalf of herself.

☐ As the representative of _____, who is a living person.

☐ As the Administrator, Administrator ad Prosequendum, or other representative of the Estate of _____ (hereinafter “Decedent”), who died on _____.

4. **Intentionally Omitted.**

5. Plaintiff asserts that she was sold and administered New England Compounding Pharmacy, Inc.’s (“NECC”) drug methylprednisolone acetate (hereinafter referred to as “NECC drug”), causing injuries and damages.

6. The aforesaid administration of the NECC drug occurred on September 14, 2012, by Bryan Elzholtz, M.D., at New York Advanced Surgical Intervention Care PLLC (“NYASIC”), located in Bronx, New York.

7. Bryan Elzholtz, M.D. and NYASIC are collectively referred to as “Clinic Related Defendants.”

8. Plaintiff adopts and incorporates by reference the following Causes of Action asserted against Defendants in the Master Complaint:

- ☒ COUNT II: NEGLIGENCE AND GROSS NEGLIGENCE (Against UniFirst)
 - ☒ COUNT III: NEGLIGENCE AND GROSS NEGLIGENCE (Against Clinic Related Defendants)
 - ☒ COUNT IV: VIOLATION OF CONSUMER PROTECTION STATUTES (Against Clinic Related Defendants)
- Plaintiff(s) allege violation of the following consumer protection statute(s): N.Y. Gen. Bus. Law §§ 349 et seq. and §§ 350-e et seq.
- ☒ COUNT VI: VIOLATION OF M.G.L. C. 93A (Against UniFirst)
 - ☐ COUNT VII: BATTERY (Against Clinic Related Defendants)
 - ☒ COUNT VIII: FAILURE TO WARN (Against Clinic Related Defendants)
 - ☐ COUNT IX: TENNESSEE PRODUCT LIABILITY CLAIMS (Against Saint Thomas Neurosurgical and Howell Allen Clinic)

- ☒ COUNT X: AGENCY (Against Clinic Related Defendants)
- ☒ COUNT XI: CIVIL CONSPIRACY (Against Clinic Related Defendants)
- ☐ COUNT XII: WRONGFUL DEATH PUNITIVE DAMAGES (Against Clinic Related Defendants)
- ☐ COUNT XIII: LOSS OF CONSORTIUM (Against Clinic Related Defendants)
- ☒ COUNT XIV: PUNITIVE DAMAGES (Against Clinic Related Defendants)

9. Plaintiff has sent or served the pre-suit notice or demand requirements necessary to bring the claims set forth below, as required under M.G.L. C. 93A.

10. Plaintiff suffered the following injuries as a result of the administration of NECC's drug: lumbar puncture, injection and treatment at emergency room, loss of enjoyment of life, pain and suffering, and mental anguish associated with physical injuries.

11. Plaintiff suffered the following damages as a result of the administration of NECC's drug(s): pain and suffering, mental anguish, emotional distress, past medical care and treatment, loss of enjoyment of life, and past medical expenses.

WHEREFORE, Plaintiff demands Judgment against Defendants awarding compensatory damages, punitive damages, attorneys' fees, interest, costs of suit, and such further relief as the Court deems equitable and just.

SECOND COUNT

12. Plaintiff re-alleges and incorporates by reference each of the foregoing paragraphs as if set forth at length herein.

13. Plaintiff asserts the following additional Causes of Action against Defendants: Plaintiff incorporates all allegations and counts contained in Plaintiff's First Amended Complaint

found at Docket No. 4, in the litigation styled Raymond McDow, et al. v. New England Compounding Pharmacy, Inc., et al.; United States District Court, District of Massachusetts, 1:12-cv-12112-RWZ, (MDL No. 1:13-md-2419-RWZ) together with all prayers for relief stated therein.

14. Plaintiff suffered injuries as set forth in Paragraph 10 herein.

15. Plaintiff suffered damages as set forth in Paragraph 11 herein.

WHEREFORE, Plaintiff demands Judgment against Defendants awarding compensatory damages, punitive damages, attorneys' fees, interest, costs of suit, and such further relief as the Court deems equitable and just.

JURY DEMAND

Plaintiff hereby demands a trial by jury.

Dated: February 6, 2015

Respectfully submitted,

/s/ Mark P. Chalos

Mark P. Chalos (TN BPR #19328)
mchalos@lchb.com
Annika K. Martin
akmartin@lchb.com
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
One Nashville Place, Suite 1650
150 Fourth Avenue North
Nashville, TN 37219-2423
Telephone: 615-313-9000
Facsimile: 615-313-9965

Counsel for Plaintiff Rosanne Brooks

CERTIFICATE OF SERVICE

I certify that the foregoing document was filed electronically through the Court's ECF system on the date shown in the document's ECF footer. Notice of this filing will be sent by operation of the Court's ECF system to all parties as indicated on the electronic filing receipt. Parties may access this filing through the Court's ECF system.

s/ Mark P. Chalos

Mark P. Chalos